IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.5041 of 2004

DATE OF DECISION: 11.8.2006

Amar Chand Suhag

..... PETITIONER

VERSUS

Union of India and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Rahul Deswal, Advocate for the petitioner.
Mr.Gurpreet Singh, Advocate for the respondents.

M.M.S.BEDI,J.

The petitioner has sought a writ in the nature of mandamus directing the respondents to grant the disability pension of the rank of JCO from the due date along with arrears of pension with interest by virtue of this petition filed under Article 226 of the Constitution. The petitioner has also sought the quashing of letters dated 21.5.1999 (Annexure P-3) and 19.1.2001 (Annexure P-5) decreasing his disability pension and rejecting the claim of enhancement of disability pension.

Brief facts, relevant for the decision of this case are that the petitioner had joined as a recruit/ Sepoy on 7.1.1951 being medically fit at the time of admission to military service. He got six to seven promotions after September 1956 and was medically down graded in July 1977 while

he was working as Sub. Major (Junior Commissioned Officer). Despite the fact that he was in the substantial rank of Sub.Major in July 1977, he was granted the disability element of pension in rank of Sepoy. Before 1992, the respondents had granted the disability pension to the petitioner at the rate of 135/- per month without D.A. on the said disability pension,therefore, the petitioner filed a representation on 24.9.1993 (Annexure P-1) for enhancement of disability pension to Rs.550/- per month. The respondents started giving him the disability pension of Rs.165/- w.e.f. 1992 as allowed by CCDA (P) Allahabad vide PPO No. E/RA/3497/93. The petitioner filed a number of representations from 1993 to 1998 to grant him D.A. on the disability pension and ultimately a detailed representation was submitted by him on 4.3.1999 (Annexure P-2). The respondents, instead of increasing the disability pension of the petitioner, decreased it from Rs.165/- to Rs.135/- per month w.e.f. 9.7.1992 to 20.12.2002 and ordered for the recovery of the over payment Vide order dated 21.5.1999 (Annexure P-3). The petitioner filed a number of representations and also served a legal notice dated 21.11.2000 (Annexure P-4) against the above said prejudicial order. In response to the legal notice the following impugned order dated 10.1.2001 (Annexure P-5) was passed.

> " Refer to your legal notice dated 21 Nov.2000.
>
> JC-22306 Ex.Sub Major Hony Lt. Amar Chand Suhag was enrolled in the Army (ASC) on 2 Jan 51 and transferred to Corps of Engineers w.e.f. 22 Oct.56. He was discharged from service on completion of terms of engagement w.e.f. 14 Fe. 78 in low medical category BEE (P) due to disease Bronchial

Asthma which was initially detected in Sep.56, while serving in ASC in the rank of Sepoy.

The above named Ex.JCO was granted disability element @ 30% w.e.f. 14 Feb.78 to 14 Sep. 79 at the rate as applicable to an OR as the onset date of disease was Sept 56 when he was an OR. Later on he has undergone Re-Survey medical Board and was further granted disability element at the same percentage/rates w.e.f. 15 Sep. 79 to 08 July 92. Thereafter he was again brought before Re-Survey medical Board and PCDA (P) Allahabad erroneously granted him disability element at the rates as applicable to JCO w.e.f. 09 Jul 92 to 20 Nov 2002 vide their PP No. D/RA/3497/1993. Accordingly the matter was referred to PCDA(P) Allahabad to issue Corr PPO to equalise the rate of disability element. PCDA (P) Allahabad corrected the rates of disability element from JCO toOR vide their PPO No. D/RA/3602/98/99.

As the date of onset of disease viz. Bronchial Asthma is Sep 56 when he was a Sepoy, he is entitled for the disability element was admissible to OR and not of the rank of JCO.

Sd/-S.K.Sharma, Major
Senior Record Officers
for OIC Record."

The validity of the impugned order dated 19.1.2001 (Annexure P-5) is the subject matter for adjudication, in this writ petition.

The petition has been contested by taking shelter of Regulation 179 of the Pension Regulations for the Army 1961(for short

'the Regulations') to contend that on the day of onset of "BRONCHIAL ASTHMA" suffered by the petitioner in September 1956, he was a Sepoy. On the aforesaid basis it is claimed that the petitioner is not entitled for the disability element as admissible to the rank of JCO. Regulation 179 of the Regulations which is relied upon by respondents reads as follows:-

> " Disability at the time of retirement/discharge
>
> 179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a dis attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 per cent or more and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid shall be adjusted against the disability pension/service element, as the case may be.
>
> (2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease."

After hearing learned counsel for the parties and going through the record, the substantial question of law which requires to be

determined is whether the disability element of pension as per Regulation 179 of the Regulations has to be assessed on the basis of the rank held on the date of retirement or on the date when the disease/ injury had been sustained or discovered.

We have considered Regulation 179 of the Regulations on which reliance has been placed by the respondents but we are constrained to observe that the respondents while reproducing the relevant legal provision pertaining to the assessment of disability pension have concealed Regulation 180 of the Regulations, which reads as follows:-

> "Rank for assessment of disability pension
>
> 180. The rank for the purpose of assessment of service element and disability element of disability pension shall be the substantive rank or higher paid acting rank, if any, held by the individual, on any of the following dates, whichever is most favourable:-
>
> (a) **the date of discharge/invalidment from service, or**
>
> (b) the date on which **he/she sustained the wound or injury or was first removed from duty** on account of a disease causing his disablement: or
>
> (c) if he /she rendered further service and during and as a result of such service suffered aggravation of disability, the date of the later removal from duty on account of the disability."

A bare perusal of Regulation 180 of the Regulations indicates that the " disability element" has to be assessed on the basis of the rank held by an army personnel at the time of his retirement/discharge. It is further

clear that regulation is to be applied in such a manner which is most favourable for the grant of disability pension. Even otherwise it is well settled that all legislations in the area of socio economic discipline are required to be construed in favour of the individual and *contra proferentem.* We are also unable to understand the novel theory of calculating disability pension in the rank such disability was suffered or discovered by the petitioner. It defies any logic as the question of pension at the stage of incurring the disability or its discovery was not alive. The aforementioned question arose only when the petitioner was compulsorily retired in the rank of J.C.O. Moreover, when the condition of disability is persisted while he was working as J.C.O. and on the basis of down grading the petitioner medically he was compulsorily retired, we fail to understand as to how his pension is to be assessed on the basis of his rank when he suffered the disability or it was discovered for the first time. The stand taken by the respondents is wholly unreasonable and therefore unsustainable in the eyes of law.

When confronted with the provisions of Regulation 180 of the Regulations, learned counsel for the respondents then submitted that Regulation 180 had been amended in the year 1967,therefore, the petitioner would be entitled to disability element permissible to the rank of a Sepoy as **he** had been invalidated found suffering from the disease of Bronchial Asthama since September 1956 which is prior to the date of amendment. We do not find any force in the said contention because as per their own showing the petitioner was medically down graded and compulsorily retired. On the day when he was medically down graded and retired, he was in the rank of JCO, as such he would be entitled to the disability pension of

the rank of JCO as per Regulation 180 of the Regulations, reproduced herein above. It is not a disputed question of fact that on the day when the petitioner was compulsorily retired on medical grounds, Regulation 180 as reproduced above was on the statute book.

On the basis of the record provided, Shri Gurpreet Singh, learned counsel for the respondent, it has been submitted that disability element of pension @ Rs.165/- p.m. infact stood granted to him as is clear from the order dated 16.1.1999. We find that the afore-mentioned stand taken by the respondents is wholly unsustainable because vide order dated 16.1.1999 (Annexure R.1), the respondents had intimated to the C.C.D.A. (P) Allahabad that correct PPO was required to be issued by issuing corrigendum as the earlier grant of disability element of pension @ Rs.165/- from 30 % disability w.e.f. 9.7.1992 to 20.11.2002 was not issued by considering the petitioner as J.C.O. as was sought to be projected vide letter of CCDA(P) vide PPO No.D/RA/3497/93. In response to the afore-mentioned intimation, the OIC record has passed an order dated 19.1.2001 (Annexure P.5) on the basis of the earlier order passed by the CCDA on 21.5.1999 (Annexure P.3) which is the subject matter of challenge in the instant petition. A close perusal of the order dated 21.5.1999 clearly indicates that a reference has been made to the order of CCDA bearing PPO D/RA/3497/93. Therefore, the argument is wholly mis-leading and goes in circle and we have no hesitation to reject the same.

In view of the above discussion, the writ petition deserves to be allowed. Accordingly, the impugned orders dated 21.5.1999 (Annexure P-3) decreasing the disability pension of the petitioner and order dated 19.1.2001 (Annexure P-5) rejecting the claim of the petitioner for

enhancement of disability pension are set aside. We direct the respondents to grant the disability pension to the petitioner permissible to the rank of JCO from the due date and release all the consequential benefits including the arrears of pension within three months from the date of receipt of a copy of this order. The petitioner shall be entitled to his costs, which are assessed at Rs.10,000/-.

(M.M.S. BEDI)
JUDGE

August 11,2006
TSM

(M.M.KUMAR)
JUDGE